

BIDZIRKsm ("The Company") would like the opportunity to provide to you, the undersigned Seller, ("You") with consignment services. In consideration of the mutual representations, warranties, covenants and agreements contained in this agreement (this "Agreement") and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, You and The Company hereby agree as follows:

1. Entire Agreement. This Agreement constitutes an offer by The Company to provide Consignment Services (as defined below) to You, if and whenever The Company, in its sole discretion, accepts property of Yours ("Property") for consignment. This Agreement represents the entire agreement between You and The Company with respect to Your overall relationship with The Company, to each item of Property accepted for consignment and to other subjects addressed herein. This Agreement shall remain in full force and effect and shall govern the relationship between The Company and You with respect to each item of Property accepted for consignment from and after the date of this agreement.

2. Services. Each time You consider consigning a piece of Property to The Company, The Company will determine whether it will be accepted for consignment. If The Company accepts the Property for consignment, You and The Company shall agree in one or more writings (together, the "Receipt") on the type of consignment services that The Company shall perform with respect to that Property (the "Services"). The Receipt and any amendments to it must contain the The Company logo or be signed by a Company representative to be binding on The Company. The Receipt and any such amendments that contain such logo or so signed are hereby incorporated by reference into this Agreement as if set forth in their entirety herein. The Company reserves the right to revoke its acceptance of the Property at any time for any or no reason. So long The Company has not revoked its acceptance of the Property, The Company shall perform the services with the respect to that Property subject to the terms and conditions of this Agreement, and The Company reserves the right, at no additional cost to you, to perform additional consignment services with respect to the Property if and as The Company elects. Notwithstanding the foregoing, the Services shall always include, unless the Receipt says otherwise, the following:

- 1) Consulting with You to help You better determine whether The Company can effectively help sell Your Property;
- 2) Performing research as The Company sees fit (for example, to more adequately describe the property);
- 3) Receive and store the Property;
- 4) Photographing the Property;
- 5) Describing the Property based on any research, the information You provide to The Company and The Company's visual assessment of the Property;
- 6) Listing the Property for sale on eBay or another market;
- 7) Communicating with potential buyers if they request;
- 8) Closing the sale by providing the buyer with an invoice;
- 9) Collecting payment from the buyer;
- 10) Collecting required sales taxes;
- 11) Packaging the Property;
- 12) Shipping the Property to the buyer;
- 13) Allowing the buyer to return the Property if The Company is contacted within 3 business days of receipt and if the Property did not meet the specifications detailed in the listing, in which case, The Company receives the item and lists it again; and
- 14) Paying You.

3. Bailment Relationship: The relationship between You, the Seller, and The Company, is that of a bailor and bailee in which the bailor (Seller) (You) deposits their Property with the bailee (The Company) for the purpose of listing and selling the Property to third parties through eBay and other auction sites of the Company's choosing. Nothing contained herein will be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

4. Title and Risk of Loss: Title and risk of loss for the Property remains with You until such time as the Property is delivered to a carrier for delivery to the buyer. Title and risk of loss will not transfer to a The Company at any time. Title of Property shipped will pass directly from Seller to a Buyer.

5. Fees. The Company fee schedule (the "Fee Schedule") in effect at the time The Company accepts your Property for consignment shall be applicable with respect to such Property unless otherwise set forth on a Receipt that is binding on The Company, and such Fee Schedule is incorporated by reference into this Agreement as if it were set forth in its entirety herein. You shall pay the fees described in the Fee Schedule, as modified by the Receipt, with respect to the Property and the Services performed. In some cases, a down payment may be required with respect to the Property and the services performed. In some cases, a down payment may be required with respect to certain Services before such Services are rendered. If ultimately The Company does not render the Services for which a down payment has been made, The Company will refund that portion of the down payment to you.

6. Binding Bids: Seller is obligated to complete the transactions with the highest bidder upon the listings completion, unless there is not exceptional circumstance, such as, (a) the buyer fails to pay for the Goods, or (b) BidZirk cannot authenticate the buyer's identity.

7. Unsold Goods: Should the Goods fail to sell within (10) days of being listed on eBay, Seller hereby authorizes BidZirk to re-list on eBay or dispose of such unsold Goods ("Unsold Goods") as Seller indicates on reverse side of this page.

8. Policies. The Company statement of consignment policies (the "Consignment Policies") in effective at the time The Company accepts Your Property for consignment shall be applicable with respect to such Property unless otherwise set forth on a Receipt that is binding on The Company, and such Consignment Policies are incorporated by reference into this Agreement as if they were set forth in their entirety herein. You shall at all times comply with such Consignment Policies, as modified by the Receipt, with respect to the Property and Services.

9. Binding Arbitration. Except to the extent equitable relief (such as injunctive relief) is sought by You or The Company, any dispute, controversy or claim arising out of or relating to this Agreement, including, without limitation, the Fee Schedule or the Consignment Policies, shall be settled by binding arbitration held in Greenville, South Carolina, by a sole arbitrator. You shall bear Your own expenses in connection with the arbitration proceeding and You and The Company shall divide equally the costs of the Arbitrator.

10. Governing Provisions. You may not modify, change, alter, renounce or waive any term, covenant or condition hereof or any of The Company rights or remedies under this Agreement unless an authorized representative of The Company consents thereto in writing. The Company agrees to provide the Services to You only on the terms of this Agreement, notwithstanding any language in any other writing or oral representation previously, simultaneously or hereafter received by The Company purporting to amend, modify or replace the terms, covenants and conditions of this Agreement with any action or inaction by The Company constitutes agreement or consent by BIDZIRKsm to such amendment, modification or replacement. THE COMPANY'S AGREEMENT TO PROVIDE THE SERVICES IS EXPRESSLY CONDITIONED ON YOUR ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

11. Acceptance. You shall be deemed to have made an unqualified acceptance of this offer and it shall become the Agreement between the parties on the earliest of the following to occur: (i) The Company receipt of a copy of this Agreement signed by You; (ii) Your payment or receipt of any amounts due under this Agreement; (iii) Your receipt of any of the Services; or (iv) any other event constituting acceptance under applicable law.

12. Your Representations and Warranties. You represents and warrants to The Company as follows:

- a) You have good, valid and indefeasible title to all of the Property consigned to The Company and attest that such Property is free and clear of all liabilities, obligations, liens, encumbrances, security interests and other restrictions of any nature whatsoever.
- b) You have full power and authorities to sell the Property consigned to The Company and/or engage The Company to sell the Property on Your behalf pursuant to this Agreement.

- c) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not conflict with or result in a breach of, or constitute a default under the terms or conditions of any court or administrative order or process to which You were a party to any agreement or instrument to which You are a party or by which You are bound.
- d) The Property is in all respects in good condition and working order (reasonable to wear and tear excepted) and is adequate for intended use. No maintenance outside the ordinary course of business is needed with respect to the Property unless specifically documented.
- e) The sale of the Property will not constitute a bulk sale under any applicable law.
- f) The Property is in all respect insured by You until its sale without possibility of return.
- g) The Property and the rights granted under this Agreement do not infringe the proprietary rights of any third party, and the description of the Property is truthful, accurate and complete. You represent and warrant that description of the Property and the description will not be false, inaccurate or misleading, be fraudulent or involve the sale of counterfeit or stolen items; violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising); be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; be obscene or contain child pornography or otherwise adult in nature or harmful to minors.

13. Indemnification. You shall and agree to indemnify, defend and hold harmless The Company, its owners, members, directors, managers, officers, employees, agents, successors and assigns from and against all direct and indirect claims, demands, actions, liabilities, judgments, damages, losses, fines, penalties, forfeitures, costs and expenses, including reasonable attorney's fees and court costs, arising out of, resulting from or relating to (a) the inaccuracy or breach of any representation, warranty, covenant or agreement of You under this Agreement; (b) any product liability, personal injury or other claims relating to the Property sold by The Company; or (c) any tax liability in connection with The Company sale of the Property.

14. Breach: Without limiting other remedies, the Company may immediately remove Your Property listings from eBay, temporarily suspend, indefinitely suspend or terminate the Services and refuse to provide future Services to You if (i) You breach this Agreement, (ii) The Company is unable to verify or authenticate any information You provides to the Company, (iii) The Company believes that Your actions may cause financial loss or legal liability for The Company, the Company's users or stores, or (iv) The Company suspects that You (by conviction, settlement, insurance or escrow investigation, or otherwise) has engaged in fraudulent activity in connection with the Property, the Company, or eBay.

15. Disclaimers. THE COMPANY DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WITH RESPECT TO THE SERVICES FURNISHED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

16. Your Exclusive Remedy. As Your sole and exclusive remedy for The Company nonconforming, defective or incomplete Services, The Company will use its best efforts to correct or cure such nonconformity or defect. If The Company is unable to correct or cure such nonconformity or defect, You will receive a refund of any fees paid by You to The Company for such particular Services. The Company's liability, and the liability of its employees and suppliers, to You or any third parties in any circumstance is limited to the greater of (i) the agreed upon value of the applicable Goods, as stated on the Receipt, or (ii) \$100. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusions may not apply to You.

17. Limited Liability. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR INCIDENTAL, INDIRECT, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. THE COMPANY'S AGGREGATE LIABILITY WITH RESPECT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT OR STRICT LIABILITY, SHALL BE LIMITED TO THE MONIES PAID BY YOU TO THE COMPANY. The remedy described in Sections 10 and 16 is Your exclusive remedy and is in lieu of any other remedy otherwise available at law or by contract.

18. Terms: The terms of this Agreement will commence upon the effective date and unless terminated earlier in accordance with the terms of this Agreement, will continue until all Property accepted for listing by The Company under this Agreement are sold and delivered, returned to You, or disposed of in accordance with Section 7, but in no event more than 60 days from the Effective Date. This Agreement may be terminated by The Company without notice, for any reason or no reason, at any time.

19. Miscellaneous. Any notice given hereunder shall be delivered personally or by registered or by certified mail, addressed to such party at its principal place of business or to such other address as the addressee may designate in writing to the other party. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Agreement shall not be construed as a waiver or a relinquishment of any right granted hereunder or of the future performance of any such term, covenant or condition. This Agreement may be amended only by an agreement in writing signed by You and an officer of The Company. This Agreement shall be governed by and construed in accordance with the internal laws of the State of South Carolina. This Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective successors and assigns; provided, however, that You may not assign any of Your rights or obligations under this Agreement without the prior, written consent of The Company.

I have read this entire Agreement (both front and back sides); I agree to read the then-applicable Fee Schedule and then-applicable Fee Schedule and then applicable consignment Policies each time I consign Property with The Company; and I agree to abide by the terms and conditions of this Agreement. I hereby acknowledge and agree that the relationship created by this Agreement is that of an independent contractor. Nothing contained in this Agreement shall be construed to constitute The Company as an employee, joint venture or partner of You, nor shall either party have any authority to bind the other in any respect, it being intended that The Company shall be an independent contractor responsible for its own actions.

Signature [Signature] Date 4/25/2005

Name (Print) Philip Smith (RUSS)

Street Address or PO Box 6001 Cleveland St

City Greenville State SC Zip 29601

Phone _____ Email Address ad200x@aol200x.com

Driver's License Copied? Yes ☐ No ☒

004348686

Bidzirk Employee _____ Date _____

Office Use Only
Comments: _____